



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 25, 1996

Mr. Kenneth C. Dippel
Cowles & Thompson, P.C.
901 Main Street, Suite 4000
Dallas, Texas 75202-3793

OR96-2198

Dear Mr. Hill:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 101903.

The Town of Addison (the "town") received a request for the personnel information of two employees of the Addison Police Department, Captain Ed McCarley and Lieutenant Mark Raines. You believe that a substantial portion of the requested information is excepted from disclosure under sections 552.101, 552.102, 552.108, 552.111, and 552.117 of the Government Code. You have submitted a representative sample¹ of the information at issue to this office for review.²

Section 552.117 of the Government Code excepts from disclosure:

[i]nformation that relates to the home address, home telephone number, or social security number, or that reveals whether the following person has family members:

(1) a current or former official or employee of a governmental body, except as otherwise provided by Section 552.024; or

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

²We assume that you have released any other responsive information to the requestor.

(2) a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code.

In accordance with section 552.117, the town must withhold from disclosure the peace officers' home addresses and telephone numbers, social security numbers, and any information that reveals whether the officers have family members. Additionally, the town must withhold the officers' former home address and telephone information from disclosure. See Open Records Decision No. 622 (1994). However, the plain language of section 552.117 does not cover fingerprint information or drivers license numbers. Therefore, the town may not withhold this information from disclosure pursuant to section 552.117.

You contend that the following information is excepted from disclosure pursuant to section 552.108 of the Government Code: the officers' personnel evaluations and drivers' license numbers, information relating to internal investigations, and information concerning the assignment of officers. Section 552.108 excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime," and "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution." Gov't Code § 552.108; see *Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996).

First, we do not believe that the personnel evaluations submitted to us or the officers' drivers license numbers are within the scope of information excepted from disclosure by section 552.108. Second, where no criminal investigation or prosecution results from an investigation of a police officer for alleged misconduct, section 552.108 is inapplicable. See *Morales v. Ellen*, 840 S.W.2d 519 (Tex. Civ. App.--El Paso 1992, writ denied); Open Records Decision No. 350 (1982). Apparently, the internal investigations that are documented in the information you submitted to this office did not result in either criminal investigations or prosecutions. However, one internal investigation is accompanied by a related offense report. With the exception of front-page information,³ the offense report may be withheld from disclosure under section 552.108.⁴ The other information relating to internal investigations is not protected by section 552.108. Third, the information concerning the assignment of officers to particular shifts is information maintained for internal use in matters relating to law enforcement and is, therefore, excepted from disclosure under section 552.108.

You also claim that some of the information at issue is excepted from disclosure pursuant

³Information normally found on the front page of an offense report is generally considered public. *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Thus, you must release the type of information that is considered to be front page offense report information, even if this information is not actually located on the front page of the offense report.

⁴We note that the offense report contains criminal history record information ("CHRI") that is confidential by law. 28 C.F.R. § 20; Gov't Code § 411.083.

to section 552.111 of the Government Code. Section 552.111 excepts "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. However, an agency's policymaking functions do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 (1993) at 5-6. We find that all of the information at issue relates to administrative or personnel matters, not the policymaking functions of the town or its police department. Consequently, section 552.111 does not except any of the information at issue from disclosure.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.102 excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Section 552.102 excepts information in personnel files only if it meets the test articulated under section 552.101 for common-law invasion of privacy. *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Accordingly, we will consider your section 552.101 and section 552.102 claims together.

For information to be protected from public disclosure by the common-law right of privacy under section 552.101, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person and (2) the information is not of legitimate concern to the public. 540 S.W.2d at 685.

The information at issue includes a variety of financial information that you contend is excepted from disclosure. This office has determined that some personal financial information is highly intimate or embarrassing and thus meets the first part of the *Industrial Foundation* test. Open Records Decision Nos. 545 (1990), 523 (1989). However, information concerning financial transactions between an employee and a public employer is generally of legitimate public interest. *Id.* Therefore, the fact that an employee participates in a group insurance plan funded by the town or state is not information that is excepted from disclosure. Open Records Decision No. 600 (1992) at 9. Financial information relating to retirement benefits must be disclosed if it reflects an employee's mandatory contributions to a state retirement system. *Id.* at 9-10. On the other hand, information is excepted from disclosure if it relates to a voluntary investment that an employee made in an optional benefits plan offered by the town or state. *Id.* In addition, information relating to an employee's choice of insurance carrier and his election of optional coverages is confidential under the right of privacy, as is information revealing an employee's designation of beneficiaries of insurance and retirement funds. *Id.* at 10-11. Finally, financial information of a purely personal nature, such as information relating to mortgage loans and bank

accounts, is protected by common law privacy and must not be released. *Id.* at 11-12.

You claim that the officers' fingerprint information, drivers license numbers, salary information, and education information are protected by common-law privacy. The *Industrial Foundation* court considered the following kinds of information to be highly intimate and embarrassing: information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. Having reviewed your arguments for withholding the officers' fingerprints and drivers license numbers in light of the standards set forth by the court in *Industrial Foundation*, we find that the officers' fingerprint information and drivers license numbers are not highly intimate and embarrassing and therefore do not meet the first prong of the *Industrial Foundation* test. Nor is the officers' salary and education information protected by common-law privacy. The public has a legitimate interest in the salaries and job qualifications of public employees to include their previous experience, training, educational level, and transcripts. Open Records Decision Nos. 470 (1987), 467 (1987), 342 (1982). In reviewing the submitted information, we noted some information, in addition to the financial information discussed above, that is protected by common-law privacy. We have marked a representative sample of this information accordingly.

Finally, section 552.101 excepts from disclosure information deemed confidential by statute. Title 26, section 6103(a), of the United States Code render employees' W-4 forms confidential, and, therefore, the forms must be withheld from disclosure under section 552.101. Medical records created or maintained by a physician are made confidential by the Medical Practice Act (the "MPA"), V.T.C.S., article 4495b, section 5.08(b), and may be released only in accordance with the MPA. Open Records Decision No. 598 (1991). See V.T.C.S. art. 4495b, §§ 5.08(c), (j). For your convenience we have marked the information that is covered by the MPA. One internal investigation contains information relating to juvenile conduct that occurred prior to January 1, 1996. Consequently, this information is confidential pursuant to former section 51.14(d) of the Family Code and must be withheld from disclosure under section 552.101. Open Records Decision No. 644 (1996).

In conclusion, only the following information is excepted from disclosure under section 552.117: former and current home addresses and telephone numbers, social security numbers, and information revealing whether the officers have family members. Section 552.108 excepts from disclosure the information concerning the assignment of officers to particular shifts and, with the exception of front-page information, the offense report that accompanies the internal investigation. Section 552.101, in conjunction with common-law privacy, protects certain financial information from disclosure, as well as the information that we have marked. CHRI, W-4 forms, medical records, and records of juvenile conduct occurring prior to January 1, 1996 are confidential by statute and are, therefore, excepted from disclosure pursuant to section 552.101. All of the other information at issue must be released to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination

regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script, reading "Karen Hattaway".

Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 101903

Enclosures: Submitted documents

cc: Mr. Gregory L. Ward
North Texas Investigations, Inc.
P.O. Box 117855
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(w/o enclosures)